

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

**UNITED STATES FOR THE USE AND)
BENEFIT OF MID STATE)
CONSTRUCTION COMPANY, INC; and)
MID STATE CONSTRUCTION)
COMPANY, INC.,)
Plaintiffs,)**

v.)

**TRAVELERS CASUALTY AND SURETY)
COMPANY OF AMERICA; U.S.)
COATING SPECIALTIES & SUPPLIES,)
LLC; and EARL WASHINGTON)
Defendants.)**

**Civil Action No: 5:11-cv-00169-DCB-
JMR**

**MID STATE CONSTRUCTION COMPANY, INC.'S
RESPONSE TO TRAVELERS CAUSUALTY AND SURETY COMPANY OF
AMERICA'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW Mid State Construction Company, Inc. ("Mid State") and files this Response to Travelers Casualty and Surety Company of America's ("Travelers") Motion for Summary Judgment [Doc. 121; Doc. 122]. For the reasons set out in Mid State's separately filed Memorandum, Travelers' motion should be denied. The exhibits to Mid State's Memorandum are the following:

- Ex. 1. Affidavit of P.G. Bernheim
- Ex. 2. Additional Indemnitor and Limited Liability Rider
- Ex. 3. Subcontract
- Ex. 4. March 8, 2011 letter and Employee Lease Agreement

- Ex. 5. Amended and Restated Agreement Regarding Bonding Credit.
- Ex. 6. Escrow Agreement
- Ex. 7. Assignment of Contract Proceeds
- Ex. 8. Notice of Assignment
- Ex. 9. May 31, 2011 letter
- Ex. 10. June 13, 2011 letter
- Ex. 11. June 13, 2011 letter
- Ex. 12. June 28, 2011 letter
- Ex. 13. July 5, 2011 letter
- Ex. 14. June 30, 2011 bond claim
- Ex. 15. August 1, 2011 letter to Travelers
- Ex. 16. April 1, 2010 letter
- Ex. 17. Stacy O'Neal deposition excerpts
- Ex. 18. Travelers' underwriting documentation
- Ex. 19. September 13, 2011 Gdanski e-mail chain
- Ex. 20. Mid State's corrected and supplemental expert designations
- Ex. 21. Affidavit of Tony Head
- Ex. 22. Payment history
- Ex. 23. Earl Washington deposition excerpts
- Ex. 24. Roberta Ziv-Goldstein deposition excerpts
- Ex. 25. July 26, 2011 e-mail
- Ex. 26. June 16, 2011 Washington letter

- Ex. 27. July 14, 2011 Washington letter
- Ex. 28. July 21, 2011 Mid State letter
- Ex. 29. July 28, 2011 Mid State letter
- Ex. 30. June 25, 2012 Ziv-Goldstein email
- Ex. 31. October 11, 2011 Ziv-Goldstein email
- Ex. 32. October 7, 2011 Corps letter
- Ex. 33. August 3, 2011 Corps letter re: Mid State
- Ex. 34. August 3, 2011 Corps letter re: Birdsong
- Ex. 35. July 6, 2011 Corps letter
- Ex. 36. July 11, 2011 Corps letter
- Ex. 37. July 28, 2011 Corps letter
- Ex. 38. July 19, 2011 Corps email
- Ex. 39. Travelers' motion for relief from stay
- Ex. 40. Travelers' motion to compel rejection of contract
- Ex. 41. August 9, 2011 Travelers email
- Ex. 42. August 1, 2011 Travelers email
- Ex. 43. August 10, 2011 Travelers email
- Ex. 44. August 15, 2011 Travelers email
- Ex. 45. August 17, 2011 Travelers email
- Ex. 46. August 24, 2011 Travelers email
- Ex. 47. September 7, 2011 Travelers email
- Ex. 48. September 29, 2011 Travelers email

- Ex. 49. Mid State's expert designations
- Ex. 50. Chad Melroy deposition excerpts
- Ex. 51. Travelers file notes
- Ex. 52. Herb Irvin deposition excerpts
- Ex. 53. Agreement Regarding Bonding Credit
- Ex. 54. November 11, 2011 email
- Ex. 55. November 15, 2011 email re: UCC
- Ex. 56. November 15, 2011 email regarding SBA approval
- Ex. 57. November 17, 2011 email
- Ex. 58. November 18, 2011 email
- Ex. 59. US Coating payment applications
- Ex. 60. Mid State payment applications
- Ex. 61. Payment summary thru April 2011
- Ex. 62. Payment summary thru June 2011
- Ex. 63. Payment and billing recap
- Ex. 64. May 19, 2011 letter
- Ex. 65. May 25, 2011 demand for arbitration
- Ex. 66. June 7, 2011 letter
- Ex. 67. June 16, 2011 US Coating letter
- Ex. 68. June 21, 2011 amended demand for arbitration
- Ex. 69. June 17, 2011 letter
- Ex. 70. June 23, 2011 letter

- Ex. 71. June 27, 2011 email and drafts
- Ex. 72. June 28, 2011 letter
- Ex. 73. July 1, 2011 termination letter
- Ex. 74. August 1, 2011 Mid State letter re: allegations
- Ex. 75. August 1, 2011 Mid State letter re: subcontractors
- Ex. 76. August 1, 2011 Mid State letter re: salvage and mitigation
- Ex. 77. Fed Ex delivery ticket
- Ex. 78. August 5, 2011 email re: payment
- Ex. 79. August 9, 2011 email forwarding drafts
- Ex. 80. August 9, 2011 letter re: securing funds
- Ex. 81. August 8, 2011 Corps email
- Ex. 82. August 15, 2011 Mid State letter
- Ex. 83. August 17, 2011 Corps letter
- Ex. 84. August 19, 2011 Corps letter
- Ex. 85. August 18, 2011 Mid State letter
- Ex. 86. August 18, 2011 Mid State email
- Ex. 87. August 19, 2011 Mid State email
- Ex. 88. August 24, 2011 Corps email
- Ex. 89. September 1, 2011 Mid State letter
- Ex. 90. December 1, 2011 Travelers email with arbitration award
- Ex. 91. December 1, 2011 Travelers funds letter
- Ex. 92. December 5, 2011 corrected Travelers funds letter

- Ex. 93. December 5, 2011 Corps letter
- Ex. 94. Bankruptcy Court order
- Ex. 95. Tony Head deposition excerpts
- Ex. 96. August 3, 2012 Travelers email re: agreement in lieu of indemnity
- Ex. 97. August 6, 2011 Travelers email re: agreement in lieu of indemnity
- Ex. 98. Thomas Caldwell deposition excerpts
- Ex. 99. Capital one account documentation
- Ex. 100. August 13, 2011 Mid State email re: Travelers escrow etc.
- Ex. 101. August 5, 2011 Travelers email
- Ex. 102. August 19, 2011 Gipson Steel email
- Ex. 103. December 3, 2010 Corps letter
- Ex. 104. US Coating Specialties & Supplies, Inc. Balance Sheet
- Ex. 105. Travelers loss projection
- Ex. 106. Travelers claim summary
- Ex. 107. Travelers Mid State analysis
- Ex. 108. July 13, 2011 Gipson email
- Ex. 109. February 16, 2012 Travelers email
- Ex. 110. Travelers checks
- Ex. 111. Mid State contract summary
- Ex. 112. February 18, 2012 Mid State email
- Ex. 113. February 23, 2012 Mid State email
- Ex. 114. May 4, 2012 Corps email re: takeover agreement

- Ex. 115. May 21, 2012 Corps email re: questions
- Ex. 116. March 28, 2012 email re: Nicholson report
- Ex. 117. October 12, 2012 Corps email re: tender agreement
- Ex. 118. Birdsong Subcontract
- Ex. 119. Adam Evans subcontract
- Ex. 120. Kenneth Ryan affidavit
- Ex. 121. July 5, 2011 Mid State letter
- Ex. 122. August 22, 2011 Mid State letter
- Ex. 123. June 24, 2010 Travelers email forwarding rider

RESPECTFULLY SUBMITTED, on July 5, 2013.

MID STATE CONSTRUCTION COMPANY, INC.

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CERTIFICATE OF SERVICE

I, the undersigned Ralph B. Germany, Jr., hereby certify that I have served the above and foregoing on all counsel of record via filing with the Court's electronic filing system. And have served the document on Earl Washington and US Coating:

Via E-Mail and U.S. Mail

Mr. Earl Washington, Individually and as
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/s/ Ralph B. Germany, Jr.

Ralph B. Germany, Jr.